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By Hand

June 30, 1999

Janet Gail Besser, Chair

Department of Telecommunications & Energy

100 Cambridge Street

Room 1210

Boston, MA 02202

Re: Comments on the Department of Telecommunications and Energy proposed regulations, 220 C.M.R. 13.00 et seq.

Dear DTE Chair Besser,

The Massachusetts Office of Dispute Resolution (MODR) has reviewed the Department of Telecommunications and Energy (DTE) proposed regulations, 220 C.M.R. 13.00: Rules and Regulations Implementing Legislation to Protect Customers From the Unauthorized Changing of Local or Long Distance Service Provider, particularly section 13.05 which is derived from Chapter 327 of the Acts of 1998 amending Chapter 93 of the M.G.L. MODR is writing to strongly urge and request that DTE change the references to alternative dispute resolution in the proposed regulations to language which more closely tracks the language of the statute.

Provisions of the Statute and the Regulations

M.G.L. c. 93 110

Section 110 (a) through (j) describes the complaint process as an administrative investigation conducted by DTE. The purpose of this process is for DTE to adjudicate (make a determination) based on the evidence presented by the parties. Section 110 (k) authorizes DTE to create an alternative informal procedure for the resolution of such complaints. (underlining added)

220 CMR 13.05

Section 13.05, is entitled Alternative Dispute Resolution Procedure for Slamming Complaints and appears to be intended to develop the alternative process authorized by Section 110 (k) of the statute. However, Section 13.05 (a) and (b) does not describe an alternative dispute resolution process, but rather a more streamlined investigation and adjudication process than the more lengthy adjudicatory process contained in Section 110 (a) through (j) of the statute.

Observations

Alternative Dispute Resolution (ADR) is a term of art used to describe any method

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of dispute resolution other than formal adjudication such as court litigation or administrative proceedings (Underlining added)

The provisions contained in 13.05 (a) and (b) offer an administrative investigation and adjudication proceeding. Thus, it is not an Alternative Dispute Resolution process.

Suggestions

As we understand it, the purpose of the regulation is to outline an informal investigation proceeding process authorized by Section 110 (k) of the statute. MODR strongly urges and requests that the language in the titles, headings and body of 220 CMR 13.00 use the language of the statute, and exclude references to alternative dispute resolution. If the references to alternative dispute resolution were to remain, it would be misleading and could cause inappropriate expectations and/or misunderstandings. Instead, MODR recommends that the titles, headings, general language, etc. use the same language as the statute.

Attached please find two copies of 220 CMR 13.00. The first copy has in bold the words alternative dispute resolution (or dispute resolution) wherever they appear in the proposed regulations. The second copy has our recommended language in bold with arrows in the margins pointing to lines where we are requesting a change.

Thank you for your consideration of this request. Please feel free to call me with any questions or comments (617/727-2224 x315).

Sincerely,

Fredie D. Kay, Esq.

Executive Director

Enclosures

Cc: Mary Cottrell, Secretary

Department of Telecommunications and Energy